

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
COMMUNITY DEVELOPMENT DIVISION

Subject: PROCUREMENT

Effective Date: September 1, 2015

Effective December 26, 2014, HUD has implemented 2 CFR Part 200 to replace Uniform Administrative Requirements in A-102 and A-110, Cost Principles in A-21, A-87 and A-122 and Audits in A-133. Procurement standards are addressed in the OMB Omni Circular (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards) in 2 CFR 200.317–326. ***CDD Grantees should review the full text of the OMB Omni Circular (2 CFR 200-317-326, Procurement Standards) to ensure full compliance.***

This Policy Bulletin incorporates, the procurement standards in 2 CFR Part 200 and is intended to be the standards to be used by all CDD grantees. Local units of government may use their own procurement standards as long as they are in compliance with all of the provisions of Part 200.

This policy identifies:

- General Procurement Standards,
- Competition,
- Methods of Procurement,
- Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms,
- Contract Cost and Price
- MSHDA Review
- Bonding Requirements
- Contract Provisions

GENERAL PROCUREMENT STANDARDS (Sec. 200.318)

The Grantee:

- Must use its own documented procurement procedures which reflect applicable State, local and tribal laws and regulations, provided the procurements conform to applicable Federal law and standards in this section (Sec. 200.318(a)).
- Must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders (200.318(b)).
- Must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts (200.318(c)(1)). If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflict of interest (200.318(c)(2)).
- Must avoid acquisition of unnecessary or duplicative items (Sec. 200.318(d)).
- Is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services (Sec. 200.318(e)).

- Is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs (Sec. 200.318(f)).
- Is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost (Sec. 200.318(g)).
- Must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement (200.318(h)). Consideration must be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Awards, subawards, and contracts with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities are not allowed (E.O. 12549, E.O. 12689, 2 CFR 180).
- Must maintain records sufficient to detail the history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. (Sec. 200.318(i)).
- May use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to the grantee is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit (Sec. 200.318(j)).
- Accepts sole responsibility, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement (Sec. 200.318(k)).

COMPETITION (200.319)

All procurement transactions must be conducted in a manner providing full and open competition constituent with the standards of Part 200. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurement. Some situations that could be considered restrictive of competition include, but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify,
- Requiring unnecessary experience and excessive bonding,
- Noncompetitive pricing practices between firms or between affiliated companies,
- Noncompetitive contracts to consultants that re on retainer contracts,
- Organizational conflicts of interest,
- Specifying only a "brand name" product instead of allowing "an equal" product,
- Any arbitrary action in the procurement process.

The grantee must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local or tribal geographical preferences, except where expressly mandated or encouraged.

The grantee must have written procedures for procurement transactions which:

- Incorporate clear and accurate description of the technical requirements for materials, products or services to be procured.

- Identify all requirements which the offerors must fulfill and all factors to be used in evaluating the bids or proposals.
- Ensure that all prequalified lists of persons, firms, or products used for acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.

METHODS OF PROCUREMENT (Sec. 200.320)

The non-Federal entity must use one of the following methods of procurement:

1. **Micro-purchases** for acquisition of supplies or services if aggregate amount does not exceed \$3,000: Micro-purchase may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable. MSHDA considers a price to be reasonable if it is in line with current prices for the same service or product in the geographic area in which the purchase is to be made.
2. **Small purchase procedures** – contracts not exceeding Simplified Acquisition threshold (currently \$150,000). Price or rate qualifications must be obtained from an adequate number (2 or more) of qualified sources. Price or rate qualifications must be documented on service provider's letterhead, dated and signed.
3. **Sealed bids** (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. This method is preferred for procuring construction, if the following are present:
 - a. A complete, adequate, and realistic specification or purchase description is available,
 - b. Two or more responsible bidders are willing and able to compete effectively for the business, and
 - c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- a. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids. The invitation for bids must be publically advertised,
 - b. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond,
 - c. All bids will be opened at the time and place prescribed in the invitation for bids,
 - d. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of,
 - e. Any or all bids may be rejected if there is a sound documented reason.
4. **Competitive proposals** are used with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. Procurement of professional services including architectural, audit and third party administration must use the competitive proposal method. The following requirements apply:
 - a. Requests for proposals (RFP) must be publicized and identify all evaluation factors and their relative importance. In most cases, solicitation by mail or newspaper or professional journals is appropriate. A telephone call is not sufficient.
 - b. Any response to publicized RFPs must be considered to the maximum extent practical,
 - c. Proposals must be solicited from an adequate number of qualified sources,

- d. The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients,
- e. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered, and
- f. The grantee may use competitive proposal procedures for qualifications-based procurement of architectural/engineering A/E professional services. This method, where price is not used as a selection factor can only be used in the procurement of A/E professional services.

Procuring audit services (Sec. 200.509). The grantee must follow the procurement standards in sections 200.317-326, as applicable. Whenever possible, the grantee shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services.

In requesting proposals for audit services:

- 1) Objectives and scope of the audit should be made clear and
- 2) Grantee must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS.

Factors to be considered in evaluating each proposal for audit services include:

- 1) Responsiveness to the request for proposal,
- 2) Relevant experience,
- 3) Availability of staff with professional qualifications and technical abilities,
- 4) Results of external quality control reviews, and
- 5) Price.

An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by Sec. 200 when the indirect costs recovered by the auditee during the prior year exceeded \$1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

Federal auditors may perform all or part of the work required under Sec. 200 if they comply fully with the requirements of Sec. 200.

See, Audit Guide on the Grantee Tools webpage at http://www.michigan.gov/mshda/0,4641,7-141-5564_46919---,00.html

- 5. **Noncompetitive proposals** – procurement through solicitation of a proposal from only one source. This type of procurement may be used only when one or more of the following apply:
 - a. The item is available only from a single source,
 - b. The public exigency or emergency for the requirement will not permit a delay
 - c. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity, or
 - d. After solicitation of a number of sources, competition is determined inadequate.

CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS (Sec. 200.321)

The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps must include:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists,

- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources,
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises,
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises,
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce, and,
- f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (a) – (e) above.

CONTRACT COST AND PRICE (Sec. 200.323)

The grantee must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

The grantee must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under 2 CFR 200, Subpart E – Cost Principles.

The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

MSHDA REVIEW (Sec. 200.324)

Grantee must make available, upon MSHDA's request, technical specifications on proposed procurements where MSHDA believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.

Grantee must make available upon MSHDA request, for the pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- a. Grantee's procurement procedures or operation fails to comply with these procurement standards,
- b. The procurement is expected to exceed the Simplified acquisition Threshold (\$150,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation,
- c. The procurement, which is expected to exceed the Simplified Acquisition Threshold (\$150,000), specifies a "brand name" product.
- d. The proposed contract is more than the Simplified Acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

Grantee is exempt from the pre-procurement review if MSHDA determines that grantee's procurement systems comply with 2 CFR 200 and this Policy.

- a. Grantee may request that its procurement system be reviewed by MSDHA to determine whether its system meets these standards in order to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis.
- b. Grantee may self-certify its procurement system. Grantee is expected to self-certify in its Application for HRF Funds.

BONDING REQUIREMENTS (Sec. 200.325)

For construction of facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (\$150,000), MSHDA may accept the bonding policy and requirements of the Grantee provided that MSHDA has determined that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- a. A bid guarantee from each bidder equivalent to 5% of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part of the contractor for 100% of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.
- c. A payment bond on the part of the contractor for 100% of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

CONTRACT PROVISIONS

Grantee contracts must contain the applicable provisions described in Appendix II to Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

If you have questions, contact your CD Specialist at 517-373-1974.

Attachment

A. Contract Provisions